

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

INSUL COMPANY, INC.,

Debtor.

CASE NUMBER 02-43909

ANDREW W. SUHAR, TRUSTEE,

Plaintiff,

vs.

ADVERSARY NUMBER 04-4100

TRAVELER'S CASUALTY AND SURETY
COMPANY, et al.,

Defendants.

O R D E R

This matter came on upon the motion to dismiss and amended motion to dismiss (collectively the "Motion to Dismiss") of Defendants United States Fire Insurance Company and Crum & Forster Indemnity Co. filed on behalf of alleged Defendant RiverStone PPA ("RiverStone"). On May 25, 2004, Andrew W. Suhar ("Suhar"), Trustee for Insul Company, Inc. ("Insul"), Debtor herein, filed Adversary Number 04-4100 (the "Adversary Proceeding") to determine the validity, priority or extent of a lien or other interest in prop-erty; to obtain a declaratory

judgment relating to the foregoing, for injunctive relief and other relief. Suhar filed this Adversary Proceeding against "approximately 36,297 asbestos claimants and claims represented by the following lawyers and/or law firms" and also specifically named 47 Defendants. Eight of the named Defendants are insurance companies. The remaining named Defendants are law firms that allegedly represent asbestos claimants who have filed lawsuits or asserted asbestos related injury claims against Insul (the "Asbestos Claimants"). All such Asbestos Claimants assert pre-petition claims. There has been no bar date for pre-petition claims against Insul.

Insul filed a Chapter 7 bankruptcy petition on or about September 4, 2002. Insul sold all of its operating assets to Cast Powder LLC on June 30, 2002 for Six Hundred Sixty-Four Thousand Dollars (\$664,000.00) in cash plus the assumption of Insul's remaining liability to National City Bank, Insul's secured creditor. All of the cash proceeds of sale were paid to National City Bank, but National City Bank was still owed over One Million Dollars (\$1,000,000.00). Pursuant to the complaint in the Adversary Proceeding, Insul states that it has no assets to pay claims asserted by the Asbestos Claimants except for certain policies of insurance, as set forth in the Adversary Proceeding.

On July 22, 2004, this Court held a hearing on Suhar's

motion for preliminary injunction, which sought to enjoin the law firm of Kelly & Ferraro, one of the Defendants in the Adversary Proceeding, from continuing certain pre-petition lawsuits asserting claims by certain Asbestos Claimants by reimposing a stay on such pre-petition lawsuits. It was necessary to reimpose a stay because, on or about October 21, 2003, Insul had agreed with Kelly & Ferraro, pursuant to a stipulation that was so ordered by the bankruptcy court, to modify the automatic stay imposed by § 362 of the Bankruptcy Code so that the pre-petition asbestos lawsuits could proceed to judgment or settlement. The stipulation further provided that no payment could be made to the Asbestos Claimants from any applicable insurance proceeds without further order of the bankruptcy court. This Court denied the motion for preliminary injunction on due process grounds, citing the fact that the Asbestos Claimants represented by the Kelly & Ferraro law firm were not before the Court and also that there appeared to be no change in circumstances that would warrant the reimposition of a stay that Insul had voluntarily modified nine months earlier.

On September 17, 2004, Defendants United States Fire Insurance Company and Crum & Forster Indemnity Co. filed a motion to dismiss on behalf of RiverStone, and on September 20, 2004, the same parties filed an amended motion to dismiss. The basis for the Motion to Dismiss is that RiverStone is not an existing

legal entity, that RiverStone Claims Management LLC is a third-party administrator for Defendants United States Fire Insurance Co. and Crum & Forster Indemnity Co., but that RiverStone Claims Management LLC is not an insurance carrier and did not issue Insul any insurance policies. The Motion to Dismiss states that since "RiverStone" is not an existing legal entity, the Adversary Proceeding must be dismissed under Rule 7012(b)(6) for a failure to state a claim upon which relief can be granted.

A motion for withdrawal of the reference was filed by Cincinnati Insurance Company, Crum & Forster Indemnity Co., Firemen's Fund Insurance Company, United States Fire Insurance Company and Zurich American Insurance Company of Illinois on September 17, 2004. On that same date, these same parties filed a memorandum in support of the motion for withdrawal of the reference.

On October 6, 2004, Suhar filed a motion for extension of time to respond to several motions to dismiss, including the instant Motion to Dismiss, requesting a thirty (30) day extension to respond. To date, Suhar has filed no response to the Motion to Dismiss. This Court finds that the Motion to Dismiss is well taken. Since RiverStone has not issued any policies of insurance to Insul, RiverStone is not a proper Defendant to the lawsuit and Suhar cannot obtain the requested relief from RiverStone. The

complaint fails to state a claim upon which relief can be granted against RiverStone. Therefore, it must be dismissed pursuant to FED. R. BANKR. P. 7012(b)(6). Accordingly, the complaint in the Adversary Proceeding is dismissed as to RiverStone PPA.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**